IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6570 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MM VAGHELA - Petitioner(s)

Versus

NATIONAL TEXTILE CORPORATION GUJ LTD & 1 - Respondent(s)

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Appearance :
MR AK CLERK with MR SHASHIKANT S GADE for Petitioner(s) : 1,
MR DEEPAK SHUKLA FOR NANAVATI & NANAVATI for Respondent: 1-2.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 20/10/2005

ORAL JUDGMENT

1. The petitioner was working as Labour Officer cum Labour Welfare Officer with the respondent No.2 Mill, which was Unit of respondent No.1 – National Textile

Corporation (Gujarat) Ltd. (“NTC” for short). The petitioner joined the service with respondent No.2 on 1.1.1980. He came to be dismissed from service from 16.9.1986. He, therefore, challenged the said action of the respondents by preferring SCA No.5117 of 1986 which came to be decided on 24.11.1995, where it was ordered that the impugned order of penalty of removal from service without attaching disqualification of future employment be set aside. The matter was remanded to the Disciplinary Authority for imposition of appropriate penalty after giving opportunity to the petitioner. The whole exercise was to be completed within a period of three months from the date of receipt of writ of that direction.

1.1 The said order was challenged by NTC by preferring LPA No.52 of 1996. The said LPA came to be disposed by order date 13.3.1997 on basis of consent terms. The consent terms are at Annexure-C and the order is at Annexure-D (to the petition). By virtue of said consent terms, it was agreed by NTC to accept the petitioner's request, representation and assurance and it was also agreed to reinstate him in service without any back-wages or any other monetary claim or any service

benefits for the period of his dismissal from the date of dismissal from service till reinstatement.

1.2 Subsequent to the said order, the petitioner came to be reinstated and continued to work as Labour Officer till he retired from service on 31.5.2002 on reaching age of superannuation i.e. 60 years.

1.3 The petitioner, during his tenure of service after reinstatement, claims to have made several representations for the benefits of revised pay scale, which other Labour Officers were being paid as per VDA pattern, as against the CDA pattern in which the petitioner was placed upon reinstatement.

1.4 On 28.2.2002, a communication was addressed to the petitioner, whereby it was indicated that his date of birth, as per record, was 1.6.1942 and as he was due to complete 60 years of age on 31.5.2002, as per Rules of the Mills, he is informed that on completion of 60 years, he would be relieved from his duties on 31.5.2002 after duty hours.

1.5 The petitioner, therefore, approached this Court

with this petition on 17.7.2002 as per record of the Court, though the petition indicates date to be 29.5.2002, seeking following reliefs :

(A) Your Lordships may be pleased to admit and allow this Special Civil Application, by quashing and setting aside retirement notice.

(B) Your Lordships be pleased to grant ad-interim relief against the compulsory retirement of petitioner from service w.e.f. 31.5.2002 also directing the respondents to continue the petitioner in his service till the final disposal of this petition.

(C) Your Lordships be pleased to grant ad-interim relief directing the respondents to given 3rd, 4th and 5th Pay Commission Scales, its arrears to the petitioner looking to the facts and circumstances of the case, in the interest of justice.

(D) grant such other and further relief/s that may be deemed fit and proper in the facts and

circumstances of the case.

(E) cost of this petition in favour of the petitioner be granted.

2. The petition came to be admitted by order dated 30.7.2002, making the rule returnable on 5.9.2002. The respondents are represented by Nanavati & Nanavati by caveat and they have waived the service of notice of rule.

3. The case of the respondents is that the petitioner was reinstated at his original position under VDA pattern as per settlement in the LPA. For benefits of CDA pattern as per compromise purshish in SCA No.3552 of 2001, Annexure-I to affidavit-in-reply, the members of the National Textile Corporation run by Mill technicians and officers, staff union (Gujarat) Ahmedabad were to be given the benefit of CDA pattern provided they opted for it and for those who opted for CDA pattern, it was agreed that the age of superannuation would be reduced from 60 years to 58 years. The benefit was supposed to be given to those members, whose name appeared in the annexure to the purshish. It is, therefore, the case of the

respondents that since the name of the petitioner did not figure in the annexure to the purshish nor did the petitioner opt for the CDA pattern within stipulated time after reinstatement and continued to work till reaching age of superannuation of 60 years (not 58 years as contemplated under CDA pattern), he cannot claim the benefit now.

4. Learned Advocate Mr.Clerk for Mr.Gade for the petitioner submitted that the petitioner was not given any option to opt for CDA pattern. When the compromise was arrived at between the Union and the respondents, the petitioner was not in service, as he was dismissed in 1986, whereas the compromise was arrived at in 1990. The petitioner was reinstated in service on basis of the compromise in year 1996 and, therefore, the petitioner was not aware about the settlement. He, therefore, could not have exercised the option in time. The respondents are instrumentalities of State and they were in duty bound to inform the petitioner about the settlement and about his right to opt for either of the scheme. The petitioner went on making representations but, none of the representations have been replied to. The petitioner was, therefore, under a compulsion to continue with the

VDA pattern. The petitioner never knew about the terms of settlement. He was making representations only on basis of the better salaries and better remunerations enjoyed by other loabour officers. Therefore, the stand taken by the respondents is not just and legal. The stand taken by the respondents is on a presumption about the petitioner being in knowledge of the settlement arrived at between the Union and the respondents in the year 1990. Learned Advocate Mr.Clerk submitted that the petitioner is not claiming any extraordinary benefits and he had no reason not to opt for the CDA pattern. All that the petitioner claims is the benefit of remuneration as per CDA pattern which all other Labour Officers cum Labour Welfare Officers working with the respondents were enjoying. Mr.Clerk also submitted that the petitioner would not press for interest or remuneration for the period of service beyond 58 years rendered by the petitioner. He submitted that the conduct of the petitioner, if seen, would indicate that he was genuinely unaware about the settlement and the option that he has to exercise. So far as the prayer part is concerned, Mr.Clerk submitted that the prayer is not happily worded but, the relief may be appropriately moulded by the Court.

5. Learned Advocate Mr.Shukla for the respondents submitted that the petitioner had been working as a Labour Officer cum Labour Welfare Officer with the respondent Mill. That he is a highly qualified person, who has post graduated in law. Mr.Shukla submitted that the entire petition is founded on a premise that the petitioner was unaware or ignorant about the settlement but, his conduct indicates otherwise. In his representation, he has sought benefit of the CDA pattern. It is also indicated by learned Advocate Mr.Shukla that in a communication addressed to respondent No.2 on 16.2.2001, the petitioner has sought benefit of leave encashment which was available only under VDA pattern. He has indicated that tenor of the letter indicates that there were staff members, who were on VDA pattern.

5.1 Mr.Shukla submitted that the petitioner has approached the Court at a very belated stage. Making of repeated representations could not wipe out the effect of delay and latches. Mr.Shukla submitted that apart from the representations that he had made, the conduct of the petitioner is to be examined from the angle that the petitioner continued to work till he attained age of 60 years and drew all the benefits of a regular employee

under the VDA pattern and now, he is claiming benefits of the CDA pattern. Mr.Shukla submitted that even after he came to know about his superannuation on 28.2.2002 (Annexure-A), he did not take any action till 29.5.2002, the date with which the petition is dated and if the office record is seen, it is instituted on 17.7.2002. Mr.Shukla submitted that the petitioner could not claim this benefit for the reason that he did not exercise his option after being reinstated as per settlement. As per settlement with the Union, the benefit was to be given to the persons, whose name appeared in the schedule attached to the compromise purshish as members of the Union. The petitioner was not the member of the Union when the said settlement was arrived at with the Union nor was he member of the Union when he was reinstated. It is only after his reinstatement that he became member and, therefore, the benefit cannot be claimed by the petitioner.

5.2 Learned Advocate Mr.Shukla has also contended that NTC is a sick unit declared under Sick Industrial Companies (Special Provisions) Act,1985 (“SICA' for short) and, therefore, this petition cannot be entertained.

5.3 Mr.Shukla has placed reliance on decision in the case of Morarji Desai Textile Labour Cooperative Industries Ltd. Vs. Thakorebhai Dhulabhai Patel, 2003 -II LLJ 129 (Gujarat) and unreported judgment in the case of Dakshin Gujarat General Labour Association Vs. State of Gujarat rendered in SCA No.8351 of 1999 on 26.10.1999 and LPA No.1603 of 1999 arising therefrom decided on 30.12.1999 and submitted that the case of the petitioner would be hit by provisions contained in Section 22 of SICA.

5.4 Mr.Shukla has placed reliance on certain other decisions as well. Mr.Shukla, therefore, submitted that the petition may be dismissed.

6. Learned Advocate Mr.Clerk, in rejoinder, placed reliance on decision in case of Rajnagar Textiles Mills No.1 Vs. Textile Labour Association, 1998 (2) GCD 1704 (Gujarat) and decision of Bombay High Court in the case of Rashtriya Kamgar Sanghatana & Anr. Vs. GKW Ltd. & Ors, 2004 III CLR 132 to support his contention that in cases relating to wages, the embargo under Section 22 of SICA will not apply.

7. With regard to rival side contentions, at the outset, it would be appropriate to place on record a very relevant fact, on appreciation of the conduct of the parties being that the petitioner has been working as a Labour Officer cum Labour Welfare Officer with the respondent No.2. Undisputedly, he possesses high academic qualification viz. B.Com LL.B., LL.M. His entire case is founded on a plea that he was ignorant about the settlement arrived at between the Union and the respondents in the year 1990 in SCA No.3552 of 2001.

7.1 It is not in dispute that when settlement was arrived at in the year 1990, the petitioner had already been dismissed from service. It is also not in dispute that the petitioner came to be reinstated on 11.4.1997 by virtue of a settlement in LPA arising out of the petition filed by him, where it was agreed that he will be reinstated without any back-wages or any other monetary claim or any service benefits for the period of his dismissal from the date of his dismissal from service till his reinstatement. The petitioner started working on his reinstatement as Labour Officer. It is indicated by a further affidavit by the petitioner that he started

making representations for the benefit of revised pay scale as per 3rd and 4th Pay Commissions from 11.8.1997 and continued to do so till 25.1.2002. A perusal of this communication produced before the Court would indicate that his representations were founded on the fact that other labour officers working in other Units of NTC were getting revised pay scales as per 3rd and 4th Pay Commission. It is not possible to accept the contention that for 5 long years, the petitioner did not inquire as to why other Labour Officers were being paid the benefits under CDA pattern, as against remuneration being paid to him under VDA pattern. The petitioner is a post graduate in law and obviously, it can be reasonably expected and legitimately inferred that he would make such inquiry. His case, therefore, that he has never known about the settlement of 1990, on basis of which other Labour Officers were being paid remuneration as per CDA pattern, cannot be accepted.

7.2 Resultantly, the petitioner has approached this Court after a lapse of about 5 years. The action, therefore, suffers from the vice of delay and latches and may have several financial implications and complications.

8. It is also to be noted that the tenor of the arguments on behalf of the petitioner was that the respondents have failed in their duty by not bringing to the notice of the petitioner the factum of 1990 settlement with the Union. It is also contended that there is violation of Articles 14 and 16 of the Constitution of India on part of the respondents, when they have not treated the petitioner equally with other Labour Officers.

8.1 As noted in the earlier paragraphs, the petitioner's case about lack of knowledge on his part cannot be accepted. The petitioner was reinstated by virtue of a settlement with the respondents and it is not the case of the petitioner that the respondents have not acted upon the said settlement. The terms of settlement were that the petitioner was to be reinstated in service, obviously, reinstatement would mean at his original position and it was also agreed that the reinstatement would be without any back-wages or any other monetary claim or service benefits for the period of his dismissal. Against this, it would also be relevant to note that the petitioner, on one hand, went on

addressing communication for benefit of CDA pattern but, continued to work after completing 58 years of age. When the petitioner claims benefit of CDA pattern, he is bound to know that the said pattern could have been available by only on some basis and what that basis is. Apart from that, a knowledge on part of the petitioner can be inferred that persons enjoying remunerations under CDA pattern were supposed to superannuate on completion of 58 years and if he was claiming benefit under that pattern, he certainly would be required to superannuate at 58 years. The petitioner has not taken any action in this regard. On the contrary, he has continued to work till he completed 60 years of age and has drawn all the advantages receivable by him.

8.2 At this stage, it would also be appropriate to refer to communication sent by the petitioner on 16.2.2001 to the General Manager of Viramgam Textile Mills, where he has requested for grant of leave encashment for 15 days on the basis that every staff member of VDA pattern are getting the same. The tenor of the letter would indicate that there are staff members, who were working on VDA pattern and there were staff members, who were working on CDA pattern. Any person

would inquire about the reason for this dual patterns. The petitioner that because he was not informed by respondents he never knew about 1990 settlement and introduction of CDA pattern is not possible to be accepted.

8.3 The petitioner has, therefore, drawn all the benefits of VDA pattern and it is only at the final stage of superannuation that he has approached this Court with this petition claiming benefits of CDA pattern. The petition, therefore, suffers from vice of delay and latches and the case of the petitioner about his lack of knowledge also cannot be accepted.

9. Apart from the above aspects, it would also be appropriate to note that without any dispute, NTC has been declared to be a sick unit. Learned Advocate Mr.Shukla submitted that the petition, therefore, cannot be entertained. The said contention is vehemently opposed by placing reliance on the decision in the case of Rajnagar Textiles Mills (Supra) and ISPL Industries Ltd. Vs.S.J.Mehta & Ors., 2002 (1) GLH 93 and it is contended that the embargo under Section 22 of SICA will not apply to cases relating to wages.

9.1 In this regard, it would be appropriate to refer to a decision of this Court in the case of Morarji Desai Textile Labour Association Ltd. (Supra), where a view has been taken on basis of several decisions that where there are monetary implications involved in the proceedings or any other proceedings of such nature, they cannot be prosecuted unless necessary consent as required under Sub-Section (1) of Section 22 of SICA is obtained. It was also held that prosecution of such proceedings without requisite consent from BIFR ceases to have any legal effect. For arriving at this decision, a reliance was placed on decision in the case of Dakshin Gujarat General Labour Association Vs. State of Gujarat rendered on 26.10.1999 in SCA No.8351 of 1999, where recovery was sought to be effected for the dues of workman. This Court took a view that when Company is declared to be a sick industrial company under the provisions of SICA and the scheme for its rehabilitation is in progress, such relief cannot be granted de-hors the provisions of the scheme and the Act. The said decision was challenged in LPA No.1603 of 1999 and the Division Bench of this Court did not interfere with said order and a direction was given that if an application seeking permission was pending

before the Board, the Board will decide the same as expeditiously as possible, preferably within 1 month from receipt of the writ. It was also observed that if no such application is filed, same may be filed and after receiving the same, Board will pass appropriate orders within four weeks. Thus, the decision rendered in case of Rajnagar Textiles Mills No.1 (Supra) being prior in point of time, even if takes a contrary view, will not govern the present case.

9.2 Likewise, in the case of ISPL Industries Ltd. (Supra), it appears that BIFR was approached and BIFR had passed some order, wherein, it was directed that in case the Unit was working, the current assets could be utilized for running day-to-day operations and ultimately, observation was made that there is no bar for the authorities under Industrial Disputes Act to proceed notwithstanding the provisions contained in Section 22 of SICA.

10. In the opinion of this Court, when the decision in case of Dakshin Gujarat General Labour Association in SCA No.8351 of 1999 was not interfered with by Division Bench of this Court and a direction was given to make an

application before BIFR, it is not possible to take a different view on basis of finding giving by coordinate Bench of this Court.

10.1 Similarly, in the case of Abad Dairy Vs. Manjibhai Dhanjibhai & Ors., 2001 (3) GLR 1857, a Division Bench of this Court, while taking the factum of Abad Dairy being sick unit, took a view that, “our conclusion is that the learned Single Judges have erred in granting relief of regularization and monetary benefits”.

11. The Hon'ble Apex Court in the case of NTC (IDA) Employees Association Vs. Union of India, 1998 LIC 2776 (relied in M.D. Textile Labour Cooperative Industries Ltd. by coordinate Bench of this Court) also refrained from passing any order by observing that, 'the dispute may not survive if the petitioner - Association makes an appropriate application before BIFR for getting clearance in connection with implementation of the benefits flowing from the said O.M. dated 19th July,1995.

12. In the opinion of this Court, therefore, a contrary view is not possible to be taken. The view taken

by Division Bench in LPA No.1603 of 1999 is subsequent to the view expressed by co-ordinate Bench of this Court in case of Rajnagar Textiles Mills No.1 (decided on 23.2.1998) and Parmeshwar Narayan Vs. Collector, Ahmedabad 200) (1) GLR 521 (decided on 14.6.1999). Whereas, the view expressed in ISPL Industries Ltd. (Supra) was in light of order passed by BIFR, as can be seen from Para.19 of the said order. The judgments relied upon by learned Advocate Mr.Clerk for the petitioner, therefore, cannot help the petitioner and petition would be hit by Section 22 (1) of SICA in light of view taken in unreported decision of the Division Bench in the case of Dakshin Gujarat General Labour Association in LPA No.1603 of 1999 dated 30.12.1999.

13. Last but not the least, the prayer clause of the petition is also very relevant to be noted. On one hand, the petitioner seeks benefit of CDA pattern, where age of retirement is 58 years and admittedly, he has worked till completion of 60 years of age. Therefore, there is no question of granting prayer in Para.10 (A) and (B) of the prayer clause. So far as prayer in Para.10(C) is concerned, as discussed above, the petitioner was working under VDA pattern and by settlement he was reinstated,

obviously, in the same pattern. He has thereafter not indicated his desire to change over to CDA pattern. He has taken all the benefits under VDA pattern and has continued to work for 2 long years even after reaching the age of retirement as per CDA pattern. He cannot claim the benefits at such a belated stage when he has not taken any action for 5 long years. Making of continued representation itself would not abrogate the effect of delay and latches. As discussed above, again, it is not possible to accept the contention of the petitioner that he was unaware abut the changes by virtue of 1990 settlement between the Union and the respondents.

14. It would also be appropriate to note that the petitioner has an alternative remedy available to him under a different provision of law.

15. Further, the question whether, the petitioner was not aware and could not have been aware, would be the disputed questions of fact, particularly when he was working as a Labour Officer, whether other Labour Officers are being paid remunerations on the CDA pattern etc., are all disputed questions of fact and, therefore, this Court would not enter into examination of those

disputed question of fact while considering a petition under Article 226 of the Constitution of India. The petition, therefore, must fail on multiple counts viz. (i) it is hit by Section 22 of SICA (ii) that it is a delayed action and (iii) that the petitioner has an alternative remedy.

16. The petition, therefore, stands dismissed. Rule discharged. No costs.

(A.L.DAVE,J.)

(vipul)